

**PT 03-30**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

---

---

**SOUTH PARK CHURCH  
OF PARK RIDGE  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

---

---

**No: 02-PT-0016  
(00-16-2706)  
PIN: 12-02-214-023**

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. Gregory S. Gann of Gann & Parker, P.C. on behalf of the South Park Church of Park Ridge (the “applicant”); Mr. Michael Abramovic, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

**SYNOPSIS:** This matter presents the limited issue of whether any part of real estate identified by Cook County Parcel Index Number 12-02-214-023 (the “subject property”) was “used exclusively for religious purposes,” as required by Section 15-40 of the Property Tax Code (35 ILCS 200/1-1, *et seq.*) during any part of the 2000 assessment year. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (the “Board”) on March 19, 2001. Dept. Group Ex. No. 1. The Board reviewed applicant’s complaint and recommended that the requested exemption be granted. *Id.* The Department rejected the Board’s recommendation *in toto* by issuing a

determination, dated February 7, 2002, which found, in substance, that applicant failed to submit sufficient documentation to support the claimed exemption. *Id.*

Applicant filed an appeal to this denial and later presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at that hearing, I recommend that the Department's initial determination be modified in accordance with the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT:**

**A. PRELIMINARY MATTERS**

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Group Ex. No. 1.
2. The Department's position in this matter is that the applicant did not submit sufficient documentation to support the claimed exemption. *Id.*
3. The subject property is located immediately adjacent to applicant's main church facility, which was exempted from real estate taxation pursuant to Departmental determinations in Docket Numbers 87-16-40, 87-16-50, 82-16-38, 70-16-23, 77-16-287 and 77-16-1990. *Id.*; Administrative Notice.
4. Applicant and the Department have stipulated that applicant owned the subject property throughout the 2000 assessment year. Tr. p. 22.
5. The subject property is improved with a two-story, three-bedroom building and a single-story, detached garage with an adjoining storage room. Dept. Group Ex. No. 1; Applicant Ex. Nos. 2, 3, 4; Tr. pp. 30-32.

6. The improvements are divided into the following major use areas:

Area	Dimensions (Given in sq. ft.)	Total Square Footage	% of Total Square Footage	Use
<b>BUILDING IMPROVEMENT</b>				
<b>First Floor</b>				
Storage Area	20.00 x 20.00	400.00	26%	Storage
First Floor Bedroom	12.00 x 14.00	168.00	11%	Residential <sup>1</sup>
Family Room	22.00 x 10.00	220.00	14%	Residential 1
Living Room	24.00 x 18.00	432.00	28%	Residential 1
Kitchen	12.00 x 8.00	96.00	6%	Residential 1
<b>Total First Floor</b>		<b>1,316.00</b>	<b>85%</b>	
<b>Second Floor</b>				
Second Floor Bedroom	10.00 x 12.00	120.00	8%	Unspecified
Second Floor Bedroom	14.00 x 8.00	112.00	7%	Unspecified
<b>Total Second Floor</b>		<b>232.00</b>	<b>15%</b>	
<b>TOTAL BUILDING AREA</b>		<b>1,548.00<sup>2</sup></b>	<b>100%</b>	
<b>DETACHED GARAGE</b>				
Actual Garage Area	14.00 x 12.00	168.00	100%	Storage
Adjoining Storage Room	8.00 x 10.00	80.00	100%	Mixed <sup>3</sup>

Tr. pp. 24-28, 30, 34-35.

1. See, Finding of Fact 7, *infra*.

2. 1,316.00 sq. ft. + 232.00 sq. ft. = 1,548.00 sq. ft.

3. See, Finding of Fact 10, *infra*.

7. Carrie Mercer, who was applicant's "youth pastor" and the director of applicant's children's ministries, resided in the building improvement throughout the 2000 assessment year.<sup>4</sup> Tr. pp. 32-33.
8. Applicant stored equipment that it used in its youth ministries, such as tents, tables and chairs, in the 400 square foot storage room. Tr. pp. 28-29.
9. Applicant stored lawn mowers, garden hoses, fertilizing carts and snow removal equipment, which it used for maintenance of its main church facility, in the 168 square foot garage area. Tr. p. 28.
10. The 80.00 square foot adjoining storage room contained a washer and dryer, as well as youth activity materials that applicant stored therein. Tr. p. 28.<sup>5</sup>

#### **CONCLUSIONS OF LAW:**

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1 *et seq*, wherein the following are exempted from real estate taxation:

**200/15-40. Religious purposes, orphanages, or school and religious purposes**

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to

---

4. The uses described in this and all subsequent Findings of Fact shall be understood to be uses occurring during the 2000 assessment year unless context clearly specifies otherwise.

5. The record does not indicate exactly how the 80 square feet was allocated between the washer and dryer and the youth activity materials.

a profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents, and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of the vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent, or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution or denomination requires that the above-listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 ILCS 200/15-40.

The word “exclusively” when used in Section 15-40 and other property tax exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Furthermore, the “religious purposes” contemplated by Section 15-40 are those which involve the use of real estate by religious societies or persons as a stated places for public worship, Sunday schools and religious instruction. People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

Where real estate is used for multiple purposes, and can be divided according to specifically identifiable areas of exempt and non-exempt use, it is appropriate to exempt those parts that are in actual, exempt use and subject the remainder to taxation. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971).

This particular subject property contains two separate building improvements, which were, in turn, divided into distinct usage areas during 2000. Most of the main building improvement was used as a residence. There was, however, one 400 square foot area within this improvement that applicant used for storage of tents and other materials that applicant used in connection with its youth programs.

The second, smaller improvement, consisted of: (a) a main garage area wherein applicant lawn care and other equipment that it used for upkeep of its tax-exempt main facility; and, (b) an adjoining storage room that contained a washer and dryer as well as other equipment that applicant used in connection with its youth ministry programs.

The recently decided case of DuPage County Board of Review v. Department of Revenue, et al., 339 Ill. App.3d 230 (2<sup>nd</sup> Dist. 2003) is instructive with respect to the residential use issues raised herein. The property at issue in that case was a five bedroom house that its owner, the Good Shepard Evangelical Lutheran Church, (the “Church”) used as housing for one of its teachers.<sup>6</sup> *Id.* at 230.

The house was situated near the Church’s main campus, which contained a religious school that it operated. *Id.* at 231-232. All of the other teachers who taught at the school and the school principal lived in private homes that were not owned by the Church. *Id.* at 236. However, the Church elected to provide the teacher who lived in the house with Church-owed housing because she was single and the Church had a previous experience with a single teacher “who left us through death.” *Id.* at 232.

---

6. The property also included a detached garage that the Church used for storage of church-related materials. The exemption of this garage was not, however, before the DuPage County Board of Review Court because the appellant Board of Review had previously acquiesced to its exemption. DuPage County Board of Review, supra, at 233.

The record did not, however, contain any other evidence proving that the Church could not have housed the teacher in “reasonably safe and appropriate private lodgings.” *Id.* Moreover, although the contract that governed the terms and conditions of the teacher’s employment specifically required that she live in the house, the house itself was “never” used for meetings or other school activities. *Id.*

The teacher did, nevertheless, use one of the bedrooms located in the house as her office, from which she graded papers and did other school-related work. *Id.* She did not, however, actually perform many of her job duties, which included serving as the school’s athletic director and helping with the Church’s vacation Bible school, in the house. *Id.*

The court held that the house did not qualify for exemption under Section 15-40 for several reasons. First, because the individual in question was a teacher, and not a minister, the parsonage provisions contained in Section 15-40, which specifically refer to ministers and other employed clergypersons,<sup>7</sup> did not apply. *Id.* at 235. As such, the

---

7. The parsonage provisions at issue in the DuPage County Board of Review case, were, for present purposes, substantially identical to those quoted, *supra*, at pp. 4-5 in that they provided in relevant part, for exemption of the following:

all ...property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents, and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of the vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent, or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution or denomination requires that the above-listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

decisive issue in the case was, in the court's view, whether the house was "used exclusively for religious purposes," as required by Section 15-40.

The court acknowledged that such exclusive use may be found where it is clearly and convincingly proven that the housing in question was "used *primarily* for purposes that were reasonably necessary" to facilitate some specifically identifiable exempt use. *Id.* at 236-237 emphasis added. (citing MacMurray College v. Wright, 38 Ill.2d 272, 230 (1967)). Despite this, the DuPage County Board of Review court held that the Church had failed to prove that it was "reasonably necessary" for the teacher to reside in the house there at issue because: (a) other teachers, and the school principal, lived in private housing; and, (b) the record did not contain enough evidence to prove, by the requisite clear and convincing evidence, that the Church required the teacher to live in the house out of concern for her personal safety. DuPage County Board of Review, *supra*, at 236-237. The court then proceeded to hold that the house was not otherwise "exclusively" used for "religious" purposes because the Church did not hold any "school or religious functions" at the house and the teacher only performed what amounted to incidental grading of papers and related work at the house. *Id.*

When comparing this case to DuPage County Board of Review, I can only conclude that applicant has failed to sustain its burden of proof with respect to most of house areas in question for several reasons. First, although applicant's director of operations and sole witness, Fred Ramel, testified that applicant's youth pastor, Carrie Mercer, lived in the house throughout 2000, neither his testimony nor any other evidence of record is legally sufficient to constitute clear and convincing evidence of exempt use.

---

35 ILCS 200/15-40.

Mr. Ramel testified on direct examination that Ms. Mercer was applicant's youth pastor and director of applicant's youth ministries during 2000. Tr. pp. 32-34. However, applicant did produce Ms. Mercer's license to act as a minister, which Mr. Ramel admitted to seeing on the wall of her office. Tr. pp. 43-44. Nor did the applicant present any other documentary evidence which established Ms. Mercer's standing as a minister within applicant's church. For these reasons, and because Ms. Mercer did not testify at the hearing, the record fails to establish that she is the type of "minister" or other employed clergy whose housing would be subject to exemption as a parsonage.

Even if this were not the case, Mr. Ramel specifically admitted on cross examination that he had not personally seen the contract that governed the terms and conditions of Ms. Mercer's employment. Tr. pp. 41-42. Because Mr. Ramel further admitted that his job duties did not include keeping any such contracts (*id.*), his testimony, standing alone, can not possibly rise to the level of clear and convincing evidence necessary to sustain applicant's burden of proof. However, even if I were to accept Mr. Ramel's testimony at face value, the most applicant would have proven is that Ms. Mercer enjoyed use of the house as "as part of her compensation." Tr. p. 33.

Neither the parsonage provisions contained within Section 15-40 nor the "reasonably necessary" standard applied in DuPage County Board of Review contemplate that property should be exempted from real estate taxation merely because it is included within an employee's compensation package. Indeed, our courts have held that residential facilities that serve primarily as mere conveniences for their residents do not qualify for exemption even if they are incidentally used for exempt purposes.

Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill. App.3d 420 (2nd Dist. 1987).

This record does not contain any evidence, such as firsthand testimony from the person who resided in the house, or, at least, the actual contract document that governed the terms and conditions of her employment, to establish that the house was even incidentally used for exempt purposes. Thus, if the record in DuPage County Board of Review, *supra*, was held legally insufficient to sustain exemption even though it contained: (a) firsthand testimony from the individual who lived in the house; and, (b) the actual contract document that governed the terms and conditions of that individual's employment with the Church; and, (c) a specific provision in that contract which required that the individual live in the house; and, (d) evidence indicating that the Church might have imposed that requirement out of concern for the individual's safety, then I fail to see how this record, which contains absolutely no evidence on *any* of these points, could possibly be legally sufficient to sustain exemption of all areas of the main building improvement that Ms. Mercer used as her personal residence.

With respect to the three storage areas currently at issue, it is first noted that, in general, such areas qualify for exemption only if their use is reasonably necessary to facilitate or further another specifically identifiable exempt use. Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985, 987 (4<sup>th</sup> Dist. 1992); Evangelical Hospital Ass'n. v. Novak, 125 Ill. App.3d 439 (2<sup>nd</sup> Dist. 1984) Evangelical Hospitals Corp. v. Illinois Department Of Revenue, 223 Ill. App.3d 225, 231 (2<sup>nd</sup> Dist. 1992).

The 168 square-foot garage area, wherein applicant stored lawn care and other maintenance equipment that it used at its tax-exempt main church facility, satisfies this

criterion. So does the 400 square foot storage area that is located within the main building improvement, wherein applicant stored tents and other equipment that it used in connection with its youth programs. Therefore, the Department's initial determination with respect to these areas should be reversed.

The Department's determination with respect to the 80 square foot room that adjoined the garage should, however, be affirmed. Applicant did store equipment that it used for its youth programs in this area. However, this area also contained a washer and dryer, which, in the absence of evidence to the contrary, must be presumed to be part of Ms. Mercer's non-exempt, residential use of the main building improvement.

The record does not contain any evidence that would permit me to apportion the space within this 80 square foot between exempt and non-exempt uses. Therefore, in accordance with Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971), applicant has failed to establish the factual basis required to obtain an exemption for whatever parts of the square footage within this area that it actually used for appropriate storage purposes.

In summary, Section 15-40 of the Property Tax Code, 35 ILCS 200/15-40, provides for the exemption only of that class of properties which are "exclusively" or primarily used for "religious" purposes. 35 ILCS 200/15-40; Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993); People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911). Applicant bears the burden of proving that the property it is seeking to exempt is in fact primarily used for "religious" purposes and must satisfy a standard of clear and convincing evidence in order to sustain

that burden. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987).

The most this applicant has proved by clear and convincing evidence is that: (a) the 168 square foot garage area; and, (b) the 400 square foot storage area within the main building improvement were used primarily used for storage purposes that were “reasonably” necessary to facilitate the tax-exempt “religious” activities taking place at its nearby main church facility. Therefore, the Department’s initial determination with respect to these areas should be reversed.

Applicant has not, however, clearly and convincingly proven that any other part of the main building improvement was used “exclusively” or primarily for “religious” purposes, as required by Section 15-40. Nor has it proven that any specifically identifiable portion of the 80 square foot garage was actually in exempt use, as required by Illinois Institute of Technology v. Skinner, *supra*. Therefore, the Department’s initial determination with respect to these areas should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that with respect to real estate identified by Cook County Parcel Index Number 12-02-214-023:

1. That 26% of the main building improvement situated on said real estate, or 400 square feet thereof, and an appropriate percentage of its underlying ground, be exempt from 2000 real estate taxes under 35 ILCS 200/15-40;
2. That the remaining 74% of said main improvement not be so exempt;

3. That 100% of the 168 square foot garage area situated on said property, and an appropriate percentage of its underlying ground, be exempt from 2000 real estate taxes under 35 **ILCS** 200/15-40;
4. That 100% of the 80 square foot improvement that adjoins said garage area not be so exempt.

Date 11/17/2003

Alan I. Marcus  
Administrative Law Judge